

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**TIMOTHY HOLLINGSHEAD**

**APPELLANT,**

**v.  
STATE OF MISSOURI**

**RESPONDENT.**

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DOCKET NUMBER WD71775  
DATE: November 23, 2010

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Appeal From:

Jackson County Circuit Court  
The Honorable Ann Mesle, Judge

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Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt,  
Judges

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Attorneys:

Susan L. Hogan, Kansas City, MO, for appellant.

Shaun J. Mackelprang and Mary H. Moore, Jefferson City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**TIMOTHY HOLLINGSHEAD,**

**APPELLANT,**

**v.**

**STATE OF MISSOURI,**

**RESPONDENT.**

No. WD71775

Jackson County

Before Division Three Judges: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt, Judges

Timothy Hollingshead pled guilty to one count of murder in the second degree in a plea agreement for a "lid" of twenty-one years in prison. The court accepted Hollingshead's guilty plea, ordered a sentencing assessment report, and sentenced him to twenty-one years in prison. Hollingshead filed a post-conviction motion in which he argued he did not enter his guilty plea knowingly, intelligently, and voluntarily, because his plea counsel persuaded him that he would receive no more than fifteen years in prison. The motion court denied Hollingshead post-conviction relief motion and entered judgment without a hearing, but failed to include any factual findings or legal conclusions regarding the claims of Hollingshead.

Hollingshead now appeals the motion court's denial of his Rule 24.035 motion without an evidentiary hearing.

**REVERSED AND REMANDED.**

**Division Three holds:**

In his sole Point on Appeal, Hollingshead argues the motion court erred when it denied his Rule 24.035 motion for post-conviction relief without issuing the proper findings of fact and conclusions of law to comply with Rule 24.035(j). Hollingshead is correct. Rule 24.035(j) requires the motion court to "issue findings of fact and conclusions of law on all issues presented, whether or not a hearing is held." The motion court's cursory judgment provides an inadequate record for this court to review and thus requires reversal and remand. Further, none of the five exceptions Missouri courts have recognized to this general rule are applicable in this case.

The judgment is reversed and remanded for the entry of findings of fact and conclusions of law as required by Rule 24.035(j).

**Opinion by: Gary D. Witt, Judge**

November 23, 2010

**Dissenting opinion by Judge Victor C. Howard:**

The author would hold that although the issue of preservation was not raised by the parties, this court can sua sponte raise the issue of whether Hollingshead's point on appeal was preserved for review where he failed to file a Rule 78.07(c) motion to amend the judgment. Where Rule 78.07(c) enhances the purposes of Rules 24.035 and 29.15, it applies to post-conviction proceedings. In this case, Hollingshead claims that the trial court failed to issue adequate findings and conclusions when denying his Rule 24.035 motion, but he did not raise this issue in a Rule 78.07(c) motion to amend the judgment. Therefore, where Hollingshead failed to preserve his sole issue raised on appeal, his appeal should be dismissed.

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